

HOUSE BILL REPORT

SSB 5585

As Reported by House Committee On: Local Government

Title: An act relating to land acquired from a commercial waterway district.

Brief Description: Requiring a report from port districts regarding management of former commercial waterway district property.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Poulsen, Esser and Prentice).

Brief History:

Committee Activity:

Local Government: 3/28/05, 3/30/05 [DP].

Brief Summary of Substitute Bill

- Makes the factual finding that private use of former waterway district lands without administrative oversight authority by the public owner is not in the best interest of the public or of taxpayers.
- Makes the factual finding that management under port district authority of former commercial waterway district property must be conducted in a manner that maintains the area's economic vitality, protects the environment, and responsibly preserves the public interest in public property.
- Requires that by December 1, 2005, a port district to which the property of a former commercial waterway district was transferred shall report to the chairs of the legislative committees with jurisdiction regarding port property formerly owned by the waterway district.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 4 members: Representatives Simpson, Chair; Clibborn, Vice Chair; Takko and Woods.

Minority Report: Do not pass. Signed by 2 members: Representatives Schindler, Ranking Minority Member; and Ahern, Assistant Ranking Minority Member.

Staff: CeCe Clynch (786-7168).

Background:

Port Districts

Port districts are established and authorized for the purpose of acquisition, construction, maintenance, operation, development and regulation, within the district, of harbor improvements, rail or motor vehicle transfer and terminal facilities, water and air transfer and terminal facilities, or any combination of these facilities. A port district may also, through its commission, spend money and conduct promotions of resources and facilities within the district or general area through advertising, publicizing, or marketing.

A port district is granted broad authority to lease all lands, wharves, docks, and all other property it owns and controls for whatever purposes it deems proper. Subject to specified exceptions, such leases are limited to a maximum of 50 years, but under certain circumstances may be subject to additional 30-year extensions.

Commercial Waterway Districts

Early in the 20th century, the Legislature authorized the creation of commercial waterway districts for the purpose of constructing waterways for commercial navigation by straightening and deepening existing river channels.

The Washington Supreme Court, in 1963, determined in a case involving the Duwamish waterway that the district held title to land within the 500-foot right-of-way in trust for the public. Because the land was held by the district in its governmental capacity, title by adverse possession could not be acquired. The court also held, however, that (1) the district had no power to lease any area within the 500-foot right-of-way; and (2) an abutting upland owner had a right of access to the navigable channel to the extent that it did not interfere with navigation or any other right of the general public. Because, in that case, the abutting upland owner's dock and loading facilities did not interfere with navigation or any other right of the general public, the district could not have the physical structures removed from the 500-foot right-of-way.

In 1963, the Legislature authorized commercial waterway districts to transfer their functions and property to port districts. In 1971, the legislation creating commercial waterway districts was repealed.

Summary of Bill:

The act makes the following factual findings:

- that private use of former waterway district lands without administrative oversight authority by the public owner is not in the best interest of the public or of taxpayers; and
- that management under port district authority of former commercial waterway district property must be conducted in a manner that maintains the area's economic vitality,

protects the environment, and responsibly preserves the public interest in public property.

The bill also requires that by December 1, 2005, a port district to which the property of a former commercial waterway district was transferred shall report to the chairs of the legislative committees with jurisdiction regarding port property formerly owned by the waterway district. The report must include:

- existing uses of the port property by those using former waterway district property;
- a general outline of potential future uses of the public property owned by the port district;
- the status of the environmental mitigation and cleanup of the waterway that is required by federal and state law;
- the status of the port district's communication to, and work with, those using former waterway district property as of January 1, 2005; and
- general terms and conditions of leases the port believes are necessary to give the port adequate control over its property and the general terms and conditions that the port believes will give the current users of the public property continued access to the waterway.

The act expires December 31, 2005.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) The language is significantly different than it was originally and the revised language is commended. The private landowners' request that matters not be rushed has been heard and this will allow the private property owners the time that they have requested. There is no question that the Port of Seattle (Port) is the owner of the land. The issue here is the Port's lack of control over land that it owns, and how to allow property owners certainty with respect to improvements that they have made while still having in place conditions which permit the Port to exercise its authority as the owner of the land and prevent bad actors. There is a desire to work together. Substitute language proposed by some of the private landowners reads as if, rather than a study, the Port is involved in ongoing litigation and must answer interrogatories. The proposed language also inappropriately includes a conclusion that the private landowners have or will incur damages. Issues of control and responsibility arise with respect to other waterways as well. There are other instances in which the state has historically exercised no proprietary management but has, nevertheless, been held responsible under the Comprehensive Environmental Response, Compensation, and

Liability Act and the Model Toxics Control Act. The study should not be limited to only port lands formerly held by commercial waterway districts.

Testimony Against: (Opposed) While this version is better than the original, which would have significantly and permanently changed the status of property along the Duwamish waterway, there are changes and additions to the language which are necessary to make it fairer and more balanced. For instance, the legislative finding that "private use of the former waterway district lands without administrative oversight authority by the public owner is not in the best interest of the public or of taxpayers" is premature. It may or may not be in the best interest. There is no need to rush to act in this case. There are landowners who would be willing to work with the Port of Seattle. Landowners have already acted to dredge and cleanup in front of their properties. The Port can easily get rid of abandoned vessels by just calling on the abandoned and derelict vessel program. If polluters are known, a call can be made to the water marshals. Additionally, there is the permitting process which allows the Port to exercise control. The Port already has sufficient control, it just has not exercised it. The study should be conducted by a body other than the Port, which has a vested interest in the outcome. Perhaps the Joint Legislative Audit and Review Committee or a joint committee could do the study. A question was voiced as to why the Environmental Protection Agency was not leading the way on any cleanup issue and why the Port was even involved. According to a U.S. Supreme Court case concerning the Rouge River near Chicago, adjacent private landowners have riparian rights and this cannot be overturned. There is no need for this study, but if a study is to be done, the private landowners should be allowed input and a 60-day comment period is proposed.

Persons Testifying: (In support) Fran McNair, Department of Natural Resources; and Terry Finn, Port of Seattle.

(Opposed) Cliff Webster, Steve Day, and Boyer Halvorsen, Boyer Towing; M.C. Halvorsen, private citizen; and Wil Clark and Kate Julin, Hurlen.

Persons Signed In To Testify But Not Testifying: None.